

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2302

SPONSOR: Senator Haridopolis

SUBJECT: Tax/Substitute Communications

DATE: March 3, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	Favorable
2.	_____	_____	CP	_____
3.	_____	_____	FT	_____
4.	_____	_____	AGG	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill amends chapter 202, Florida Statutes, which imposes a communications services tax (CST) on, among other services, the actual cost of operating a substitute communications system in the state of Florida. This bill repeals the tax on substitute systems.

This bill amends or repeals the following sections of the Florida Statutes: 202.11, 202.12, 202.16, 202.17, 202.18, 202.19, and 202.15.

**II. Present Situation:**

In 1985, the Legislature added a substitute telephone or telecommunication system to the list of services subject to gross receipts and sales tax. At that time, most of the communications services available today did not exist. Ch. 85-174, Laws of Florida, provided:

Any person who purchases, installs, rents, or leases a telephone system or telecommunications system for his own use to provide himself with telephone service or telecommunication service which is wholly or partially independent of any local telephone system or any intrastate or interstate interexchange network or which is a substitute for any telephone company switched service or a substitute for any dedicated facility by which a telephone company provides a communications path is exercising a taxable privilege. . . .

The Legislature substantially rewrote Florida’s communications tax law in the 2000 Regular Session. Chapter 202, Florida Statutes, creates the Communication Services Tax Simplification Law (CST) which became effective January 1, 2002. Communications services are now subject to a uniform statewide tax rate and a local tax administered by the Department of Revenue

(DOR). While many issues were addressed in the rewrite, substitute communications systems were not, except to change the term “telephone service or telecommunication service” to the conforming term “communications service.” Presently, the term “substitute communications system” is defined to mean:

Any telephone system, or other system capable of providing communications services, which a person purchases, installs, rents or leases for his or her own use to provide himself or herself with services used as a substitute for any switched service or dedicated facility by which a dealer of communications services provides a communication path.

s. 202.11(16), F.S. The intent of taxing substitute telephone service or telecommunications services was to provide equal tax treatment on an in-house telephone system and telephone service purchased from a commercial provider. Today, there is uncertainty as to the proper interpretation of a “substitute communications system.”

To address that uncertainty, the DOR issued a draft rule, 12A-19.036 on substitute communications systems to initiate discussion at a workshop. This draft is subject to change as it proceeds through the rulemaking process. A public workshop was held on August 1, 2003. At the workshop, many members of the business community expressed concern that the DOR’s interpretation of the term was too broad. For example, the proposed rule found that a taxpayer operating a local area network (LAN) to connect multiple computers was operating a substitute communications system. Other examples of taxable substitute communications services from the rule include:

- A telephone system with switching and routing capabilities allowing for intercom and other self-contained communications at the taxpayer’s facility.
- A computer local area network (LAN) system that uses a router to provide switching capabilities necessary to connect the multiple computers used by the taxpayer’s employees.
- A wireless dispatch system that transmits and switches voice or data signals to provide a communications path between and among remote receivers and a central base station.
- Telephone transmission and receiving equipment located at various sites where the owner does business which include a tower for the purpose of providing communications services between those sites in lieu of using a local exchange provider and long distance provider.
- A system to transmit, route, and switch data to permit monitoring the activities and operations of manufacturing equipment, pipelines, rail systems, or utilities.
- A small business with five computers, each connected to a central router that allows the computers to share printers, files and documents, and other business related activities.
- A two-way mobile radio system that includes a base station, central tower used for signal switching, and several mobile radio units and for which the company does not buy airtime or switching services from a provider.

DOR states that each of these examples fit the definition of a substitute communications system.

Generally, sales tax and the CST attempt to create an equal tax situation between the business that buys its goods or services from another and businesses that create the goods or services in-house. Taxing substitutes is generally viewed as a tax fairness issue rather than simply a way to raise additional revenue. According to the DOR, however, defining and valuing a substitute communications service is more difficult than defining and valuing a service that is purchased from another.

The substitute communications concept has long been in statute, but has never been defined or examined. DOR reports approximately 10 companies presently pay taxes for substitute communications systems. DOR states it has not actively enforced the measure, but at the request of local governments, is now moving forward to apply meaning to taxation of substitute communications systems.

### **III. Effect of Proposed Changes:**

Section 1 amends s. 202.11, F.S., by deleting definitions of the terms “Actual cost of operating a substitute communications system” and “Substitute communications system.”

Section 2 amends s. 202.12, F.S., by deleting references to the tax rate used in calculating communications services on the actual cost of operating a substitute communications system.

Section 3 amends s. 202.16, F.S., by deleting the exception reference for the collection and remittance of communications services tax for substitute communications systems.

Section 4 amends s. 202.17, F.S., by deleting the exception reference for the issuance of annual communications services tax resale certificates by DOR to persons registered as users of substitute communications systems.

Section 5 amends s. 202.18, F.S., by deleting the requirement for the distribution of communications services tax proceeds collected from substitute communications systems.

Section 6 amends s. 202.19, F.S., by deleting the authorization for the imposition of the local communications services tax by a local government on the actual cost of operating a substitute communications system.

Section 7 repeals s. 202.15, F. S. relating to a special rules for users of substitute communications systems.

Section 8 provides the act shall take effect upon becoming law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

Because DOR has never enforced the substitute communications system tax statute and has not completed its rulemaking proceeding, the scope of the affect cannot be determined. However, it could be argued that the bill rises to the level of a local mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

According to DOR, approximately \$600,000 of revenue is currently collected, which will not be collected if this bill passes. It should be noted that repeal of this source would also reduce PECO, General Revenue, and local revenue.

If the provisions are not repealed and DOR adopts and enforces rules that broaden the definition of what is considered a substitute communications system, it is unknown how much additional taxes could be collected.

B. Private Sector Impact:

If the provisions are repealed, approximately ten businesses will no longer be required to pay approximately \$600,000 in substitute communications systems taxes.

If the provisions are not repealed, the amount of additional revenues due to the state and who they will be assessed against cannot be determined until the term substitute communications systems is defined.

C. Government Sector Impact:

According to DOR, approximately \$600,000 of revenue is currently collected, which will not be collected if this bill passes. It should be noted that repeal of this source would also reduce PECO, General Revenue, and local revenue.

If the provisions are not repealed and DOR adopts rules that broaden the definition of what is considered a substitute communications system, it is unknown how much additional taxes could be collected.

**VI. Technical Deficiencies:**

According to DOR, s. 203.01(1)(a)2., F.S., imposes a gross receipts tax on the retail sale of communications services in Florida and on the actual cost of operating a substitute communications system in Florida. The bill does not delete the authorization to impose the gross receipts tax on the actual cost of operating a substitute communications system.

The bill proposes that the act shall take effect upon becoming law. This means that DOR would need to administer and enforce this tax for the period October 1, 2001, through the effective date of the act becoming law. DOR states that such enforcement is problematic. Therefore, DOR

proposes a retroactive repeal of this tax effective October 1, 2001, and that any such repeal would not create a right to a refund of any previously paid tax on substitute communications systems.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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